HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 26788 OF 2005

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Between:

V.Rama Mohan Rao

……Petitioner

And

The Chaitanya Kalasara Jr.College,
Karmanghat, Ranga Reddy District,
Rep. by its Special Officer and two others

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri A. Venkataramana
representing
Sri D.V.Sitaram Murthy

Counsel for Respondent Nos.1 to 3 : Government Pleader for
Higher Education

Dated: 04-07-2006

Per G.S. SINGHVI, CJ

In this petition, the petitioner has prayed for quashing enquiry report dated 26-10-2005 submitted by District Vocational Education Officer, Hyderabad and show cause notice dated 02-11-2005 issued by Special Officer, Chaitanya Kalasala Junior College, Karmanghat, Ranga Reddy District (hereinafter referred to as, 'the Special Officer').

The petitioner was appointed as Junior Lecturer in Physics in Chaitanya Kalasala Junior College, Karmanghat, Ranga Reddy District (hereinafter referred to as, 'the college') on 01-08-1978 against an unaided post. In June 1981, he was absorbed against grant-in-aid post. By an order dated 06-07-1981, the management of the college declared that he has successfully completed the period of probation with effect from 01-08-1980. After ten years of his absorption against grant-in-aid post, the petitioner applied for leave from 27-06-1991 to 30-06-1991. Thereafter, he sought extension of leave for 15 days. The management of the college did not accept his request and terminated his service with effect from 25-06-1991 on the allegation of absence from duty.

The petitioner challenged the aforementioned action of the management of the college by filing an appeal before the Regional Joint Director of Intermediate Education, Andhra Pradesh (hereinafter referred to as, 'the Regional Joint Director'.) During the pendency of the appeal, the management of the college issued Memo dated 15-11-1993 which was served on the petitioner on 11-02-1994 proposing to hold departmental enquiry. The petitioner challenged the same in Writ Petition No.5049 of 1994. He prayed for quashing the enquiry proceedings. He further prayed for early disposal of the appeal pending before the Regional Joint Director. By an interim order dated 21-04-1994, a learned Single Judge of this

Court stayed the departmental proceedings. The writ petition was finally disposed of on 11-02-2000 with a direction to the Regional Joint Director to dispose of the appeal within a period of four weeks. After sometime, the petitioner filed Contempt Case No.822 of 2000 with the complaint that the direction contained in the Court's order dated 11-02-2000 has not been complied with. During the pendency of contempt proceedings, the Regional Joint Director passed order dated 06-07-2000 vide which he directed the management of the college to reinstate the petitioner, with a further direction to complete the disciplinary proceedings within three months in accordance with the provisions of Section 79 of the Andhra Pradesh Education Act, 1982 (for short, 'the Act').

In compliance of the order of the Regional Joint Director, the petitioner was reinstated in the service of the college with effect from 17-07-2000. He joined duty without questioning the latter part of order dated 06-07-2000. After five months, he was served with notice dated 09-11-2000 issued by a three member committee comprising of junior lecturers appointed by the management of the college for holding enquiry into the allegation of absence from duty. On receipt of notice, the petitioner sent reply dated 07-03-2001 wherein he objected to the composition of the committee by claiming that the enquiry cannot be entrusted to the officers of coordinate rank. The management accepted his objection and changed the Enquiry Committee. The enquiry was entrusted to District Vocational Education Officer, Hyderabad. Notwithstanding this, the petitioner continued to raise one or the other objection, which resulted in prolonging of enquiry for almost four years. After concluding the proceedings, the Enquiry Officer submitted report dated 26-10-2005. On receipt of the enquiry report, the Special Officer issued notice dated 02-11-2005 to the petitioner requiring him to show cause as to why punishment may not be imposed on him in accordance with the provisions of the Act. The operative part of the show cause notice reads as under:

> "in view of the findings of the Enquiry Officer, it is proposed as to why suitable punishment should not be imposed as per A.P. Education Act, 1982 and also G.O.ms.No.467/Edn(Rules), Dt.3.11.1983 against Sri V. Ram Mohana Rao for the irregularities committed by him which were held proved. Sri V. Ram Mohana Rao is hereby directed to show cause as to why punishment as per rules should not be inflicted on him. His explanation/reply on this should reach the under signed with in 15 days from the date of receipt of this orders. Other wise it would be construed that he has no explanation to make and further action will be taken as per rules with the available material on record. A copy of the Enquiry Report is enclosed."

However, instead of filing reply to the show cause notice, the petitioner filed the present writ petition with the prayer that the enquiry report and show cause notice be quashed. In the affidavit filed by him, the petitioner has pleaded that the proceedings held against him are liable to be declared as nullity because the management of the college did not have the jurisdiction to proceed with the enquiry initiated vide Memo dated 11-11-1993. He has further pleaded that in terms of Section 79 (2) of the Act, the proceedings should have been completed within two months and failure of the management to do so should be treated as sufficient to nullify the enquiry report and show cause notice.

In the counter affidavit filed by Sri T. Subrahmanya Sarma, Joint Director, Intermediate Education, a detailed narration of the proceedings initiated against the petitioner has been given and it has been averred that the proceedings of enquiry were delayed because of the untenable objections raised by the petitioner and attitude of non-cooperation adopted by him. According to Sri Sarma, the petitioner did not cooperate with the Enquiry Officer despite the fact that the Enquiry

Committee had been changed at his instance.

Sri A. Venkataramana, learned counsel for the petitioner argued that the enquiry proceedings are liable to be quashed at this stage because the Special Officer appointed in place of the Managing Committee did not have the jurisdiction to initiate the proceedings of enquiry. Learned counsel emphasised that the Special Officer had been appointed only to look after the routine work of the management of the college and as such, he did not have the authority to take disciplinary action against the petitioner. The next contention of Sri Venkataramana is that failure of the Enquiry Officer to complete the proceedings within two months as per the requirement of Section 79 (2) should be treated as fatal to the enquiry report as well as the show cause notice. The third contention of the learned counsel is that in terms of Rule 7 of the Rules, the enquiry was required to be conducted by an officer superior in rank than the petitioner and non-adherence to this rule has the effect of vitiating the proceedings of enquiry.

Learned Government Pleader controverted the arguments of Sri Venkataramana and submitted that the petition should be dismissed as premature because no order has so far been passed by the competent authority adversely affecting the petitioner. She pointed out that in view of the objection raised by the petitioner, the Enquiry Committee comprising of three junior lecturers was abandoned, but even then the petitioner did not cooperate with the enquiry and prolonged the proceedings and now he has questioned the enquiry report and show cause notice on untenable grounds.

We have thoughtfully considered the respective arguments and perused the record. In our opinion, none of the grounds on which the petitioner has questioned the enquiry report and show cause notice is tenable and the writ petition is liable to be dismissed.

The petitioner’s challenge to the enquiry proceedings on the

ground that the Special Officer appointed under Section 24 (3) (a) of the Act did not have the jurisdiction to initiate and/or continue the proceedings of the departmental enquiry is based on the misconceived assumption that the Special Officer had been appointed for a limited purpose to look after the day to day functioning of the management of the college. For the reasons best known to him, the petitioner has not placed on record the order vide which the competent authority superceded the Managing Committee and appointed the Special Officer. Therefore, it is not possible to accept the contention of the learned counsel that the Special Officer could not have initiated and/or continued the proceedings of enquiry. That apart, a reading of the plain language of Section 24 (3) (a) of the Act makes it clear that it does not contain any limitation on the power which can be exercised by the Special Officer on behalf of the management. Rather, the section contemplates that the Special Officer shall discharge the functions of the management till the reconstitution of the Managing Committee. This necessarily implies that the Special Officer has got all the powers vested in the Managing Committee of the college including the power to take disciplinary action against the employees.

The argument of Sri Venkataramana that the proceedings of enquiry should be quashed on account of violation of the time schedule specified in Section 79 (2) sounds attractive but lacks merit and is liable to be rejected. Section 79 of the Act, which provides for dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions reads as under:

> "79. **Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions: -** (1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as 'the employee') shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and

given a reasonable opportunity of being heard in respect of those charges:

Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.

(2) An enquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.

(3) (a) No employee shall be placed under suspension except when an inquiry into the gross misconduct of such employee is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed to have been restored as employee:

Provided that the competent authority may, for reasons to be recorded in writing, extent the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority the inquiry could not be completed within the said period of two months for reasons directly attributable to such employee.

(4) Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it

shall not be necessary to hold an oral inquiry into such allegations."

An analysis of the above reproduced provision makes it clear that the management of the college cannot dismiss, remove or reduce in rank any teacher or member of the non-teaching staff, except after holding an enquiry in consonance with the rules of natural justice. If the teacher or member of non-teaching staff happens to be an employee of a non-minority educational institution, then the management is required to obtain prior approval of the prescribed authority. Sub-section (2) of Section 79 provides for completion of enquiry within a period of two months. However, there is nothing in the language of this Section from which it can be inferred that the limitation of two months is mandatory. The mere use of word 'shall' in Section 79 (2) is not sufficient for construing the provision as mandatory because no punitive consequence has been provided for non-compliance of the time schedule of two months. Therefore, we are unable to agree with the learned counsel for the petitioner that the proceedings of enquiry should be quashed only on the ground of non-completion thereof within a period of two months.

There is another reason for not accepting the submission of the learned counsel. A perusal of the averments contained in the counter affidavit filed on behalf respondents shows that the petitioner largely contributed in delay of the proceedings of the enquiry. At the threshold of the proceedings, he raised objection to the composition of the Enquiry Committee. Even after acceptance of his objection and dropping of the Enquiry Committee, he persisted with some or other objection and thereby succeeded in prolonging the proceedings of enquiry for almost four years. In our considered view, after having achieved the objective of delaying the proceedings of enquiry, it is not open to the petitioner to turn around and contend that the proceedings should be quashed on the ground of violation of Section 79 (2) of the

Act.

Equally merit-less, the petitioner's challenge to the enquiry proceedings on the ground that the Enquiry Committee consisted of the persons of coordinate rank. In the first place, it is to be noted that the competent authority accepted the objection raised on behalf of the petitioner and abandoned the Enquiry Committee. Therefore, that objection is no longer available to the petitioner for questioning the enquiry proceedings. Secondly, it is neither the pleaded case of the petitioner nor any evidence was produced during the enquiry and none has been produced on the record of this writ petition to show that his defence was prejudiced on account of the conduct of enquiry by the particular officer/authority or in particular manner. Therefore, conduct of enquiry by the particular officer cannot be made a ground for quashing the enquiry report or show cause notice. In 1950s, 60s and 70s, the Superior Courts used to quash the orders of punishment on the ground of violation of the rules of natural justice without going into the issue of prejudice but this trend has changed with the Constitution Bench judgment of the Supreme Court in **MANAGING DIRECTOR, ECIL v. B. KARUNAKAR**[1] and a host of other decisions. In that case, the Constitution Bench of the Supreme Court considered apparently conflicting views expressed in **Kailash Chander Asthana v. State of U.P**[2] and **Union of India v. Mohd. Ramzan Khan**[3] on the interpretation of Article 311 (2) of the Constitution as amended by the 42nd Constitution Amendment Act. The main question considered by the Constitution Bench was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Supreme Court also framed the following incidental questions:

(i) Whether the report should be furnished to the

employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the basic question in the affirmative, their Lordships considered the ancillary questions and answered question No.(v) in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of

reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case**[16] (supra), a Division Bench of the

Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar**[10] (supra) and laid down the following propositions:

> i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.
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> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.
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> (iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College**[20] (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**[21] (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar's**[10] **case** (supra) and observed that the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

Similar view has been expressed in **K.N. Tripathi Vs. State Bank of India**[4], **Mumtaz Hussein Ansari Vs. State of U.P.**[5], **Kashinath Dikshita Vs. Union of India**[6], **Chandrama Tiwari Vs. Union**

of India[7], Krishanlal Vs. State of Jammu and Kashmir[8], State Bank of Patiala Vs. S.K. Sharma [9], S.K. Singh Vs. Central Bank of India[10], State of Uttar Pradesh Vs. Shatrughanlal[11], Food Corporation of India Vs. Padamkumar Bhuvan[12], Oriental Insurance Company Vs. S. Balakrishnan[13], State of Uttar Pradesh Vs. Rameshchand Manglik[14].

By applying the ratio of the aforementioned judgments to the facts of this case, we hold that violation of Rule 7 cannot be made a ground for quashing enquiry report or show cause notice.

There is another reason for not entertaining the petitioner's challenge to the enquiry report and show cause notice. He has not questioned the legality of order dated 06-07-2000 passed by the Regional Joint Director whereby the officer concerned had ordained completion of the enquiry proceedings. In our view, the petitioner's failure to challenge that direction is fatal to the prayer made in this petition.

We also find substance in the argument of the learned Government Pleader that the writ petition deserves to be dismissed as premature. On the question of Special Officer's jurisdiction to initiate and/or continue the departmental proceedings, we have ruled against the petitioner. Therefore, it cannot be said that the proceedings held against him are without jurisdiction. In this situation, the ratio of the Supreme Court's judgment in **Chief of Army Staff vs. Major Dharam**

Pal Kukrety[15] is squarely attracted in the present case and the petition is liable to be dismissed as premature.

For the reasons stated above, the writ petition is dismissed. However, keeping in view the fact that the petitioner may not have filed reply to the show cause notice by banking on the pendency of the legal proceedings in the form of this writ petition, we given him one month's time to file reply to the show cause notice and direct the concerned authority to pass appropriate order within next three months after considering the reply, if any, filed by the petitioner.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

04-07-2006
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[1] (1993) 4 SCC 727
[2] (1988) 3 SCC 600
[3] (1991) 1 SCC 588
[4] (1984) 1 SCC 43
[5] (1984) 3 SCC 295
[6] (1986) 3 SCC 229
[7] (1987) Suppl. SCC 518
[8] (1994) 4 SCC 422
[9] (1996) 3 SCC 364
[10] (1996) 6 SCC 415
[11] (1998) 6 SCC 651
[12] (1999) SCC (L&S) 620
[13] (2003) 11 SCC 734
[14] (2003) 3 SCC 443
[15] AIR 1985 SC 703